

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Service Rules for the 698-746, 747-762, and 777-792 MHz Bands)	WC Docket No. 06-150
)	
)	
Implementing a Nationwide, Broadband, Interoperable Public Safety Network)	PS Docket No. 06-229
In the 700 MHz Band)	

COMMENTS OF THE CITY OF PHILADELPHIA

The City of Philadelphia (“City”) respectfully submits these comments in response to the Second Further Notice of Proposed Rulemaking (“Second FNPRM”) released on May 14, 2008, in the above-captioned proceeding.

I. BACKGROUND

In its Second Report and Order issued in this proceeding, the Federal Communications Commission adopted rules for the recently concluded 700 MHz auction intended to promote the development of a nationwide interoperable broadband network for use by the public safety community.¹ Among other requirements, these rules would have established a public/private partnership between the D Block licensee and a Public Safety Broadband Licensee (“PSBL”), to

¹ Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band; Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Communications Requirements Through the Year 2010, PS Docket No. 06-229, WT Docket No. 96-86, Second Report and Order, 22 FCC Rcd 15289 (2007) (“Second Report and Order”).

be governed by a Network Sharing Agreement (“NSA”). In exchange for building out an interoperable network, the NSA would have provided preemptible access to the public safety spectrum to the D Block licensee, and would have permitted emergency access to the D Block spectrum to public safety users. Because the single bid submitted for the D Block license failed to meet the reserve price, the Commission has elected to solicit additional comments regarding the proposed public/private partnership in the Second FNPRM.

The City currently provides interoperable voice radio service to its first responders, and has limited interoperability with surrounding jurisdictions enabled through bridges. The City welcomes increased interoperability, particularly at the regional level where emergency response is in most cases handled, and applauds the Commission’s initiative in seeking a solution that will ensure interoperable public safety communications throughout the nation. The City has serious concerns, however, related to ceding local control over public safety infrastructure to national entities that may be unable to adequately represent the needs of our public safety users. For the reasons discussed below, the City urges the Commission to revise the scheme set forth in its Second Report and Order to incorporate the local and regional control over public safety communications that the City believes is necessary to support effective emergency management.

II. DISCUSSION

A. The Commission Should Take Steps to Ensure the Involvement of Local Governments in the Negotiation of the Network Sharing Agreement.

In the Second FNPRM, the Commission asks comments regarding the advisability of requiring a public/private partnership as a means of obtaining a nationwide, interoperable broadband network.² Reliance on a public/private partnership at the national level presents multiple risks for local governments. While local governments are uniquely well positioned to know and respond to the needs of their public safety users, it is far from clear that we will have any role in negotiating critical terms of the NSA. These critical terms include the rules for establishing which public safety users and communications are granted priority access to the shared spectrum; the events that will trigger emergency access to the D Block spectrum; and the access fees to be paid by the PSBL (and presumably recouped through fees charged to end users).

The Commission seeks comments on “whether to adopt other measures relating to the process for establishing the NSA,”³ and further asks whether it should rescind the current 700 MHz Public Safety Broadband License and seek new applicants.⁴ The real issue is how the national licensee will accommodate the needs of local governments and their public safety agencies in the NSA negotiations. These negotiations should be public and transparent, with notice of the specific terms under discussion and the positions taken, and an opportunity for comment on the terms by all interested parties, including local and state public safety agencies. Toward this end, the Commission should require the PSBL to establish and delegate authority to regional entities comprised of public safety agencies to

² *Second FNPRM* at 4 ¶ 3.

³ *Id.* at 54 ¶ 153.

⁴ *Id.* at 22 ¶ 53.

negotiate terms of the NSA that affect their operations, including commercial use of public safety spectrum, priority access for public safety communications, and preemption in cases of local or regional emergency.⁵ While this approach would require the D Block licensee to invest additional time in reaching NSAs with multiple regional entities, the costs of doing so are clearly outweighed by the benefits of ensuring that the shared network will meet the emergency response needs of public safety users at the local and regional level. In addition, the Commission should adopt rules expanding the membership requirements of the PSBL to ensure that the interests of local government are adequately represented at the national level of the public/private partnership. We strongly support the proposal by NATOA to include city and county elected officials and the national organizations that represent them in the PSBL and urge the Commission to adopt this recommendation.⁶

B. The Commission Should Take Steps to Ensure the Independence of the Public Safety Broadband Licensee.

The Commission seeks comment on whether it should clarify that the “Public Safety Broadband Licensee and all of its members...must be non-profit entities.”⁷

The Commission also seeks comment on whether the PSBL should be prevented from obtaining debt or equity financing from entities other than non-profit entities.⁸

As a trustee acting on behalf of the public safety community, it is imperative that

⁵ The regional divisions of the National Public Safety Planning Advisory Committee could serve as a model for the regional representation required to negotiate NSAs.

⁶ Comments of the National Association of Telecommunications Officers and Advisors, the National Association of Counties, the National League of Cities, and the U.S. Conference of Mayors in Response to the Second Further Notice Of Proposed Rulemaking, (“NATOA Comments”) at 17.

⁷ *Second FNPRM* at 18 ¶ 40.

⁸ *Id.*

the PSBL be completely independent of commercial interests. We believe that it is in the public interest to avoid the conflicts of interest that may arise if commercial entities are permitted to assume a governance role in the PSBL, or are otherwise able to exert influence over the Licensee through a debt or equity holding.

Accordingly, we encourage the Commission to adopt a rule limiting the membership of the PSBL to non-profits, and prohibiting entities other than non-profits from having a debt or equity relationship with the Licensee.

While prohibition of financial arrangements that may compromise the independence of the PSBL clearly is necessary to protect the interests of the public safety users that it represents, eliminating such a funding source means the PSBL will likely require funding beyond user fees in order to carry out its responsibilities. We therefore encourage the Commission to seek federal funding for the administrative and operational costs of the PSBL.⁹

C. Local Governments Should Have the Option of Independently Developing 700 MHz Networks for Public Safety Use.

1. Use of a National Network Should Not Be Mandatory.

The Commission asks whether “eligible public safety users should be required to subscribe to the network for service, at reasonable rates or be subject to some alternative obligation or condition promoting public safety network usage in order to provide greater certainty to the D Block licensee.”¹⁰ As we noted earlier in

⁹ The Public Safety Broadband Authorization Act of 2008 (H.R. 6055), introduced May 14, 2008 by Representative Jane Harman, would provide that the Commission grant up to \$1,000,000 for administrative and operational costs of the PSBL. Without commenting upon the sufficiency of the proposed funding, we encourage public funding for PSBL operations.

¹⁰ *Second FNPRM* at 17 ¶ 37.

these Comments, local governments are uniquely well positioned to know and respond to the needs of their public safety users, and should retain the authority to determine whether or not participation in the national network is consistent with their specific needs. Mandating participation in a national network is not in the public interest because it requires local governments to cede control over service and operations and to accept terms that may not meet the specific communications needs of their public safety agencies. Under the Second Report and Order, local governments will be required to pay user fees for the network that are negotiated by the PSBL and the D-Block licensee. Where local governments are required to pay user fees over which they have no control, they must have the option of declining participation in the network where they determine the fees are unaffordable or local budget appropriations do not cover them. As NATOA correctly points out, “such a rule [mandating subscriptions to the shared network] would amount to the Commission forcing local first responders to become revenue sources for for-profit commercial carriers.”¹¹

2. The Public Safety Spectrum Must Remain Available for Use by Local Governments.

The FCC seeks comment on whether the D Block licensee “should be permitted to use the entire 20 megahertz of shared spectrum for commercial service” in areas where a local jurisdiction is not using the public safety broadband network.¹² Permitting such use is not in the public interest to the extent that it precludes local governments from developing and operating 700 MHz networks

¹¹ NATOA Comments at 20.

¹² *Second FNPRM* at 16 ¶ 35.

independently of the national network. Congress intended that a substantial portion of the 700 MHz band be allocated specifically to public safety use.¹³ The 10 MHz the Commission has now allocated for public safety use should be reserved for local governments who elect not to participate in the national network and for regional interoperability arrangements. We agree with NATOA that if a public safety entity opts not to make use of the new network, the D Block licensee should not be permitted to make any use of the public safety spectrum in that jurisdiction.¹⁴ Furthermore, the D Block licensee should be obligated to provide a guard band between the D Block and public safety spectrum should it elect to build out its network for commercial use in areas where local governments operate independent networks in the public safety spectrum.

3. Public Safety Spectrum Should Not be Combined with Commercial Spectrum.

The FCC seeks comment on whether it should clarify “that the D Block licensee may construct and operate the shared wireless broadband network using the entire 20 megahertz of D Block spectrum and public safety broadband spectrum as a combined, blended resource.” Blending the two spectrum blocks would effectively preclude local governments from building and operating broadband networks, in spectrum intended for public safety use, by making all channels freely available to the D Block commercial licensee. The effect would be to force all public safety users onto the national network, for fees and on terms that are outside their control. For the reasons described above, this outcome is unacceptable. Unless

¹³ See 47 USCS 337(a).

¹⁴ NATOA Comments at 15.

some mechanism is found to preserve access to the spectrum for independent local networks, the D Block licensee should not be permitted to combine the two blocks of spectrum.

D. Management of Public Rights of Way Must Remain Under Local Control.

The Commission asks whether it should adopt rules to promote or facilitate access by the D Block licensee to public safety towers and/or rights of way.¹⁵ As a preliminary matter, the Commission lacks the authority to preempt rights of local government to manage the public rights of way to protect the public health and safety. Nor is it in the public interest to mandate access by commercial entities or otherwise circumvent the permitting processes and other measures that local governments rely upon to protect their critical infrastructure. The City urges the Commission to reject any such proposals for overriding local authority to manage local rights of way.

III. CONCLUSION

For the reasons stated above, the Commission should consider revising the rules governing the disposition of the D Block license to ensure that local governments are represented in establishing the terms of the NSA. The Commission should also adopt rules clarifying that the Public Safety Broadband Licensee and its constituent parts must be non-profit organizations, and should preserve the rights of local governments to use the 700 MHz public safety spectrum independently of the nationwide interoperable network. Finally, the Commission

¹⁵ *Second FNPRM* at 39 ¶ 104.

should refrain from taking any action that would affect the authority of local governments to manage the public rights of way.

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Respectfully submitted,

THE CITY OF PHILADELPHIA

By: /s/ Robert Sutton

Shelley R. Smith, City Solicitor
Michael C. Athay, Chief Deputy City Solicitor
Robert A. Sutton, Divisional Deputy City Solicitor
Phillip A. Bullard, Assistant City Solicitor
City of Philadelphia Law Department
1515 Arch Street, 17th Floor
Philadelphia, PA 19102

Attorneys for the City of Philadelphia